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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MATTER OF THE)
INVOLUNTARY TERMINATION)
OF THE PARENT-CHILD)
RELATIONSHIP OF P.B.,)
)
CHRISTINA BELTRAN,)
)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner,)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee (Guardian Ad Litem).)

No. 49A02-0701-JV-69

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro-Tem
Cause No. 49D09-0609-JT-36860

August 8, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Christina Beltran appeals the trial court's order terminating her parent-child relationship with P.B. On appeal, Beltran raises the single issue of whether clear and convincing evidence supports the trial court's decision. Concluding that the trial court's decision is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

P.B. was born January 1, 1998 to Beltran.¹ P.B. was removed from the home of his biological maternal grandmother in August 2005 and the Marion County Department of Child Services ("DCS") filed a petition alleging him to be a child in need of services ("CHINS"). The CHINS petition alleged that Beltran had failed to provide a safe and stable environment for P.B. because she had left him in the care of his biological maternal grandmother, from whom Beltran herself had been removed as a child. That removal resulted in the termination of the parent-child relationship between Beltran as a child and her own mother. While in his biological grandmother's care, no legal guardianship over P.B. was established. The CHINS petition also alleged that P.B. was physically abused by the

¹ P.B.'s alleged father, Pedro Beltran-Garcia, never appeared in court in either the CHINS or termination of parental rights proceedings, and was served with the petition for termination of the parent-child relationship by publication. He is not a party to this appeal.

biological grandmother and that the biological grandmother has substance abuse issues. The CHINS petition further alleged that Beltran has an extensive history with the DCS, including cases from 1996, 1998, 1999, 2001, 2004, and 2006, and that Beltran's other children are currently wards of the State. Further, Beltran was diagnosed as having bi-polar disorder.

Beltran appeared for the initial CHINS hearing, held on September 8, 2005, with counsel, Stephen McNutt. Beltran admitted the allegations in the petition and the court proceeded to disposition on that same date. P.B. was ordered removed from his mother's care and Beltran was ordered, in part, to contact the caseworker every week to allow the caseworker to monitor compliance with the court's orders in this case. Beltran's case was ordered transferred to another court, where her other children's cases were pending.

The DCS filed a Petition for Termination of the Parent-Child Relationship between Beltran and her son, P.B., on September 7, 2006. On that date, Beltran was present in court and received a summons, a copy of the petition for termination, and advisement of parental rights. Beltran requested and was given a public defender, Stephen McNutt, who entered a denial to the petition on her behalf. The court ordered a guardian ad litem ("GAL") appointed. Further, a facilitation hearing was set for October 2, 2006, and the parties were ordered to return without further notice. The court date of October 16, 2006, was noted on the summons.

Beltran failed to appear for both the October 2, 2006, facilitation hearing and the October 16, 2006, initial hearing. At the October 16, 2006, hearing, the court set the case for a default hearing on December 19, 2006. Beltran failed to appear on December 19, 2006. However, Beltran was represented by attorney McNutt and evidence was heard on the merits

of the petition for termination of the parent-child relationship.

At the hearing, the State presented testimony of Bessie Collins, the DCS case manager who was assigned to the case three weeks prior to the termination hearing. Collins testified that in the three weeks preceding the hearing, Beltran had no contact with Collins. Collins also testified that she had reviewed the contents of the file to learn about services needed by P.B. Collins stated that Beltran agreed to participate in services for possible reunification, obtain suitable housing, get a legal source of income, do home based counseling, abide by the parenting and drug and alcohol assessment in the previous case, get a psychological evaluation, do parenting and domestic violence classes, and establish paternity. Collins further stated Beltran did not complete her parenting or domestic violence classes. Collins had no record of Beltran completing a psychological evaluation, establishing a permanent home, or gaining employment, and there had been no recommendation of unsupervised visits with P.B. because Beltran was not in compliance with the ordered services. Further, although weekly visitation with P.B. was ordered, Collins testified that Beltran's visits were sporadic. Collins stated she had visited P.B. in the pre-adoptive home where he was placed in therapeutic foster care. She learned that he wanted to be adopted in his current home, and that the pre-adoptive mother intends to keep P.B. in touch with his siblings. Collins also learned that P.B.'s behavior at home appeared to be improving.

Collins testified that the DCS recommendation is that Beltran's parental rights over P.B. be terminated. The factors Collins identified as supporting that recommendation included that Beltran has not completed court-ordered services or been able to demonstrate an improvement in her parenting ability, the original reason that P.B. was removed has not

been satisfactorily addressed, Beltran appears to have unresolved illegal substance use problems, and none of her children that have been removed have been reunited with her.

The trial court accepted a statement on behalf of the GAL. The GAL agreed with the DCS that it is in P.B.'s best interests to be adopted by the foster mother and that Beltran's parental rights be terminated. The GAL further agreed that extra time should not be given for Beltran to complete services because P.B. needs permanency.

On December 19, 2006, the court entered a "Default" order (the "Order") terminating Beltran's parental rights. This appeal ensued.

Discussion and Decision

I. Standard of Review

When reviewing a termination of parental rights, we will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re Involuntary Termination of Parent Child Relationship of A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh evidence nor judge witness credibility; instead we consider only the evidence most favorable to the judgment and the reasonable inferences that can be drawn from the evidence. Id.

II. Termination of Parental Rights

A parent has a constitutional right to raise his or her children, but this right is not absolute and must be subordinated to the children's interests when the children's emotional and physical development is threatened. A.F. v. Marion County Office of Family and Children, 762 N.E.2d 1244, 1250 (Ind. Ct. App. 2002), trans. denied. Although parental

rights are afforded constitutional protections, these rights may be terminated when parents are unable or unwilling to meet their parental responsibilities. Id. We do not terminate these rights to punish a parent, but to protect a child. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), trans. denied.

The elements that must be proved by clear and convincing evidence in order to terminate a parent-child relationship are set out in Indiana Code section 31-35-2-4(b)(2):

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;***
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interest of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Beltran argues that the DCS did not present sufficient evidence to terminate her parental rights to P.B. In particular, Beltran complains that the only witness at the termination hearing was Collins, the DCS case manager, who had been involved with the case for less than three weeks, had no direct knowledge of the facts, situation or parties, and whose testimony was unsupported by relevant documentary evidence. Collins' testimony came from either the previous caseworker, or from the file, which was not introduced into evidence. Beltran now argues this evidence was inadequate to meet the clear and convincing standard required by the termination statute.

However, the transcript indicates Beltran was represented by counsel. The trial court

noted that Beltran failed to keep in contact with her attorney and failed to appear and thus she exhibited a lack of cooperation with her attorney. Although his representation of her was hindered by her lack of cooperation, Beltran's attorney was able to cross-examine the DCS case manager on Beltran's behalf, to look at the exhibits, and to continue to act as attorney for his client. Further, the trial court found clear and convincing evidence supported each element of the termination petition. The trial court's order closely mirrors the language of Indiana Code section 31-35-2-4(b)(2). We address each statutory element in turn.

First, the trial court found P.B. was removed from the parent for at least six months under the dispositional decree. Collins testified that P.B. was removed from Beltran under a dispositional decree on September 8, 2005, following Beltran's admission to the CHINS petition and that P.B. was never returned to Beltran's care. At the time of trial, fifteen months had passed since his removal under a dispositional decree. The trial court's finding that P.B. had been out of Beltran's care for at least six months under a CHINS dispositional decree was not clearly erroneous.

Second, the trial court found that there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied.² To determine whether such conditions will be remedied, the trial court must judge the parent's fitness to care for the child at the time of the termination hearing, taking into consideration any evidence of

² In its order terminating Beltran's relationship with P.B., the trial court found both that there was a reasonable probability that the conditions leading to P.B.'s removal would not be remedied, and that continuation of the parent-child relationship poses a threat to P.B.'s well being. However, under Indiana Code section 31-35-2-4(b)(2), the trial court was required to make only one of these findings. Thus, in our review, we choose to solely address the finding that there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied.

changed conditions. In re Termination of Parent-Child Relationship of D.D., 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), trans. denied. The trial court must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. Id. A trial court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Further, the trial court can reasonably consider the services offered to the parent and the parent's response to those services in making its determination. Id.

Beltran was ordered to complete services designed to improve her parenting ability and to allow her to demonstrate her willingness and ability to parent. However, Collins testified that Beltran did not complete parenting classes, did not complete domestic violence counseling, was sporadic in her visits with P.B., and provided no documentation of employment. Further, Beltran had not been in contact with the caseworker for at least three weeks and missed three of the four hearings on the termination matter over the past three months.³ Beltran's absence at trial, together with her failure to actively participate in her son's life through services demonstrates a pattern of conduct that she was not present to protect and parent her son when the CHINS case began in August of 2005 and when the termination case was tried in December of 2006. Recognizing our deferential standard of review, we find this evidence supports the trial court's finding that there existed a reasonable

³ The State points out Beltran had actual notice of two of the hearings because she was present when the dates were given. The fourth hearing was the trial setting, and notice was sent to her last known address.

probability that the conditions that resulted in the removal of P.B. would not be remedied.

Third, the trial court found termination is in the best interests of the child. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. In re D.D., 804 N.E.2d at 267. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. Id. Testimony of the DCS caseworker and the child's guardian ad litem regarding the child's need for permanency has been found to support a finding that termination is in the child's best interests. McBride, 798 N.E.2d at 203. Also, "a parent's historical inability to provide adequate housing, stability, and supervision coupled with a current inability to provide the same will support a finding that continuation of the parent-child relationship is contrary to the child's best interest." In re B.D.J., 728 N.E.2d 195, 203 (Ind. Ct. App. 2000).

The trial court heard evidence of the GAL's opinion that termination was in P.B.'s best interests because of his need for permanency. Further, the trial court had evidence of Beltran's history of being unable to care for her children as shown by her repeated contacts with DCS resulting in removal and subsequent termination of parental rights as to five other children. Based on the totality of the evidence, we conclude the trial court's finding that termination was in the best interests of P.B. was not clearly erroneous.

Finally, the trial court found there is a satisfactory plan for the care and treatment of the child. The welfare department is not required to completely detail the child's future, but only to point out in a general sense the direction of its plan. Page v. Greene County Dept. of Welfare, 564 N.E.2d 956, 961 (Ind. Ct. App. 1991). The plan for P.B. is for him to be adopted. At the time of trial he was an eight year old special needs child on medication. He

has ADHD, adjustment behavior disorder with depressed mood, anxiety, and disruptive behavior. He is placed in a therapeutic foster home through Adult and Child Services, receives services through them, and appears to have made progress in his current placement. Despite his special needs, the foster mother indicates she intends to adopt P.B. and to keep him in touch with his siblings. Further, P.B. expressed his desire to be adopted into this home. Here, DCS does have an identified adoptive family where the child is already living and desires to stay. Beltran complains the case manager's belief that there was a satisfactory plan for P.B.'s care was based on one visit with P.B. and his foster parent. However, we conclude that the trial court's finding that the DCS has a satisfactory plan for the care and treatment of P.B. was not clearly erroneous.

Conclusion

We conclude that clear and convincing evidence supports the trial court's findings that P.B. was removed from Beltran for at least six months under a dispositional decree, that the conditions that resulted in removal will not be remedied, that termination is in P.B.'s best interests, and that there is a satisfactory plan in place for the care of P.B. These findings support the trial court's termination of Beltran's parental rights. Beltran's arguments on appeal are an invitation to reweigh the evidence, which we will not do. In re J.W., 779 N.E.2d 954, 961 (Ind. Ct. App. 2002), trans. denied. The trial court did not err in granting the petition to terminate Beltran's parental rights.

Affirmed.

KIRSCH, J., and BARNES, J., concur.

